



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA-016-FOR; Docket ID: OSM-2011-0014]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing our approval of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 2002, version to the July 1, 2010, version. Additionally, Iowa proposed to revise its

Program related to ownership and control by updating its dates and adding new citations.

Iowa intends to revise its program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226-6700.

SUPPLEMENTARY INFORMATION:

- I. Background on the Iowa Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface

coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, Federal Register (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Amendment

By letter dated August 25, 2011 (Administrative Record No. IA-451), Iowa sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.). Iowa sent the amendment in response to a September 30, 2009, letter we sent to Iowa in accordance with 30 CFR 732.17(c), concerning multiple changes to ownership and control requirements (Administrative Record No. IA-450.1). Iowa proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR 700 to End from the July 1, 2002, version to the July 1, 2010, version.

We announced receipt of the proposed amendment in the October 17, 2011, Federal Register (76 FR 64043). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 16, 2011. We did not receive any public comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

Adoptions by Reference of 30 CFR Part 700 to End Revised As of July 1, 2010.

Iowa updated its adoption by reference of applicable sections of 30 CFR 700 to End from those in effect as of July 1, 2002, to those in effect as of July 1, 2010. Iowa also revised dates and added citations in its ownership and control requirement sections listed in the table below.

27 Iowa Administrative Code Chapter 40, Coal Mining Rules(IAC 27 - 40)	Topic	Federal Regulations Adopted by Reference (30 CFR)
27 - 40.1(17A, 207)(1)	Authority and scope.	Part 700.
27 - 40.3(207)	General.	Part 700.
27 - 40.4(207)	Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals.	Parts 701 and 702.
27 - 40.5(207)	Restrictions on financial interests of State employees.	Part 705.
27 - 40.6(207)	Exemptions for coal extraction incident to government—financed highway or other constructions.	Part 707.
27 - 40.7(207)	Protection of employees.	Part 865.
27 - 40.11(207)	Initial regulatory program.	Part 710.
27 - 40.12(207)	General performance standards—initial program.	Part 715.
27 - 40.13(207)	Special performance standards—initial program.	Part 716.
27- 40.21(207)(3) and (7)	Areas designated by an Act of Congress.	Part 761.
27 - 40.22(207)(1)	Criteria for designating areas as unsuitable for surface coal mining operations.	Part 762.
27 - 40.23(207)	State procedures for designating areas unsuitable for surface coal mining operations.	Part 764.
27 - 40.30(207)	Requirements for coal exploration.	Part 772.
27 - 40.31(207) (9), (10), and (11)	Requirements for permits and permit processing.	Part 773.
27 - 40.32(207)(7)	Revision or amendment; renewal; and transfer, assignment, or sale of permit rights.	Part 774.
27 - 40.33(207)	General content requirements for permit applications.	Part 777.
27 - 40.34(207)	Permit application—minimum requirements for legal, financial, compliance, and related	Part 778.

	information.	
27 - 40.35(207)	Surface mining permit applications—minimum requirements for information on environmental resources.	Part 779.
27 - 40.36(207)(2)	Surface mining permit applications—minimum requirements for reclamation and operation plan.	Part 780.
27 - 40.37(207)	Underground mining permit applications—minimum requirements for information on environmental resources.	Part 783.
27 - 40.38(207)(6)	Underground mining permit applications—minimum requirements for reclamation and operation plan.	Part 784.
27 - 40.39(207)(2) and (3)	Requirements for permits for special categories of mining.	Part 785.
27 - 40.41(207)	Permanent regulatory program—small operator assistance program.	Part 795.
27 - 40.51(207)	Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.	Part 800.
27 - 40.61(207)	Permanent program performance standards—general provisions.	Part 810.
27 - 40.62(207)	Permanent program performance standards—coal exploration.	Part 815.
27 - 40.63(207)	Permanent program performance standards—surface mining activities.	Part 816.
27 - 40.64(207)	Permanent program performance standards—underground mining activities.	Part 817.
27 - 40.65(207)	Special permanent program performance standards—auger mining.	Part 819.
27 - 40.66(207)	Special permanent program performance standards—operations on prime farmland.	Part 823.
27 - 40.67(207)	Permanent program performance standards—coal preparation plants	Part 827.

	not located within the permit area of a mine.	
27 - 40.71(207)	State regulatory authority—inspection and enforcement.	Part 840.
27 - 40.74(207)	Civil penalties.	Part 845.
27 - 40.75(207)	Individual civil penalties.	Part 846.
27 - 40.81(207)	Permanent regulatory program requirements—standards for certification of blasters.	Part 850.
27 - 40.82(207)	Certification of blasters.	Part 955.
27 - 40.91(17A, 207)	Procedural rules—contested cases and public hearings.	Part 775. 11 and 775.13
27 - 40.92(17A, 207)(8)	Contested cases.	Part 775. 11 and 775.13
27 - 40.93(17A, 207)	Commencement of proceeding.	Part 775. 11 and 775.13
27 - 40.94(17A, 207)	Appeals of division notices and orders.	Part 775. 11 and 775.13
27 - 40.95(17A, 207)	Prehearing motions.	Part 775. 11 and 775.13
27 - 40.96(17A, 207)	Issuance of notices of hearing.	Part 775. 11 and 775.13
27 - 40.97(17A, 207)	Hearing procedures.	Part 775. 11 and 775.13
27 - 40.98(17A, 207)	Posthearing procedures.	Part 775. 11 and 775.13
27 - 40.99(17A, 207)	Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.	Part 775. 11 and 775.13

We find that Iowa’s revised regulations adopted by reference are no less effective than the corresponding Federal regulations, and we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On August 31, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA-451.1). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, by letter dated August 31, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA

(Administrative Record No. IA-451.1). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. By letter dated August 31, 2011, we requested comments on the amendment (Administrative Record No. IA-451.1), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Iowa sent us on August 25, 2011.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and

program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on Federally-recognized Indian tribes.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

March 12, 2012_____

Ervin J Barchenger, Regional Director

Date

Mid-Continent Region

For the reasons set out in the preamble, 30 CFR part 915 is amended as set forth below:

PART 915 - IOWA

1. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 915.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	<u>Citation/description</u>
<p>* * * * *</p> <p>August 25,2011</p>	<p>* *</p> <p><u>[Insert date of publication in the Federal Register]</u></p>	<p>Sections: IAC 27 - 40.1(17A, 207)(1); 40.3(207); 40.4(207); 40.5(207); 40.6(207); 40.7(207); 40.11(207); 40.12(207); 40.13(207); 40.21(207)(3) and (7); 40.22(207)(1); 40.23(207); 40.30(207); 40.31(207)(9), (10), and (11); 40.32(207)(7); 40.33(207); 40.34(207); 40.35(207); 40.36(207)(2); 40.37(207); 40.38(207)(6); 40.39(207)(2) and (3); 40.41(207); 40.51(207); 40.61(207); 40.62(207); 40.63(207); 40.64(207); 40.65(207); 40.66(207); 40.67(207); 40.71(207); 40.74(207); 40.75(207); 40.81(207); 40.82(207); 40.91(17A, 207); 40.92(17A, 207)(8); 40.93(17A, 207); 40.94(17A, 207); 40.95(17A, 207); 40.96(17A, 207); 40.97(17A, 207); 40.98(17A, 207); and 40.99(17A, 207)</p>

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